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No. 35

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, PETITIONER

v.

R. P. SCOVIL, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

BRIEF FOR THE UNITED STATES

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	2
Summary of Argument	6
Argument :	
I. The United States is entitled under Section 3466 of the Revised Statutes to priority in payment of its claims for unpaid taxes	11
II. Regardless of the priority of the United States under Section 3466 of the Revised Statutes, its tax liens were prior in time and superior in right to the landlord's claim based on his distress for rent	26
Conclusion	35
Appendix	36

CITATIONS

Cases:

American Exchange Bank v. *Goodlee Realty Corp.*, 135 Va. 204	19
Beaston v. *Farmers' Bank*, 12 Pet. 102	22, 25
Bramwell v. *U. S. Fidelity Co.*, 269 U. S. 483	12, 23
Brent v. *Bank of Washington*, 10 Pet. 596	22, 25
California State Dept. of Employ. v. *United States*, 210 F. 2d 242	30
Conard v. *Atlantic Insurance Co.*, 1 Pet. 386	22
Corley-Powell Produce Co. v. *Allen*, 42 Ga. App. 641	19
Cranford Co. v. *L. Leopold & Co.*, 189 Misc. 388, affirmed, 273 App. Div. 754, motion for leave to appeal denied, 273 App. Div. 846, motion for leave to appeal dismissed, 297 N.Y. 884	32
Detroit Bank v. *United States*, 317 U. S. 329	28
Ferris v. *Chic-Mint Gum Co.*, 14 Del. Ch. 232	30
Fidelity Trust & Mortgage Co. v. *Davis*, 158 S.C. 400	19
Field v. *United States*, 9 Pet. 182	23

Cases—Continued

Page

Goggin v. *California Labor Div.*, 336 U. S. 118.... 20, 28
Hay v. *Patrick*, 79 F. 2d 407..... 19
Illinois v. *Campbell*, 329 U. S. 362..12, 13, 14, 15, 16, 23, 26
Illinois v. *United States*, 328 U. S. 8..... 12, 13, 23
MacKenzie v. *United States*, 109 F. 2d 540..... 31
Massachusetts v. *United States*, 333 U. S. 611, 12, 13, 23-24
Michigan v. *United States*, 317 U. S. 338.....10, 28, 29
Miller v. *Bank of America, N. T. & S. A.*, 166 F. 2d 415 31
National Refining Co. v. *United States*, 160 F. 2d 951 32
New York v. *Maclay*, 288 U. S. 290..... 23
Price v. *United States*, 269 U. S. 492..... 12, 22
Regan v. *Metropolitan Haulage Co.*, 127 N.J. Eq. 487 33
Shalet v. *Klauder*, 34 F. 2d 594..... 19
Spokane County v. *United States*, 279 U. S. 80..12, 22, 30
Stackley, Ex Parte, 161 S.C. 278..... 19
State v. *Gould*, 32 Del. 561..... 19
Thelusson v. *Smith*, 2 Wheat. 396..... 22
United States v. *Atlantic Municipal Corp.*, 212 F. 2d 709..... 25
United States v. *Curry*, 201 Fed. 371..... 29
United States v. *Eisinger Mill & Lumber Co.*, 202 Md. 613 ..... 31, 33
United States v. *Emory*, 314 U. S. 423..... 23
United States v. *Fidelity & Deposit Co. of Maryland*, decided July 6, 1954, affirming 108 F. Supp. 360 25
United States v. *Fisher*, 2 Cranch 358..... 22
United States v. *Gilbert Associates*, 345 U. S. 361, 9, 10, 13, 14, 16, 20, 21, 24, 31, 33
United States v. *Albert Holman Lumber Co.*, 206 F. 2d 685, rehearing denied, 208 F. 2d 113..... 25
United States v. *Knott*, 298 U. S. 544..... 25
United States v. *Liverpool & London & Globe Ins. Co.*, 209 F. 2d 684..... 25
United States v. *New Britain*, 347 U. S. 81, 9, 10, 11, 13, 14, 16, 17, 21, 24, 26, 28, 29, 30, 33-34

Cases—Continued

Page

United States v. *Oklahoma*, 261 U. S. 253 .....11, 12, 14
United States v. *Rosenfield*, 26 F. Supp. 433, reversed October 9, 1939, *sub nom. Morrison* v. *United States*, 26 A.F.T.R. 1205..... 29
United States v. *Security Tr. & Sav. Bk.*, 340 U. S. 47 .....10, 13, 14, 17, 29, 31
United States v. *Snyder*, 149 U. S. 210..... 28, 29
United States v. *Texas*, 314 U. S. 480.....12, 15, 16, 23
United States v. *Waddill Co.*, 323 U. S. 353, 12, 14, 15, 16, 21, 22, 23
Wall, In re, 60 F. 2d 573..... 19

Statutes:

Act of March 3, 1797, c. 20, 1 Stat. 512, Sec. 5, amended by the Act of March 2, 1799, c. 22, 1 Stat. 627, Sec. 65..... 22
Act of March 4, 1913, c. 166, 37 Stat. 1016..... 29
Act of February 26, 1925, c. 344, 43 Stat. 994..... 29

Internal Revenue Code of 1939:

Sec. 3670 (26 U.S.C. (1946 ed.), Sec. 3670)..26, 29, 36
Sec. 3671 (26 U.S.C. (1946 ed.), Sec. 3671)..26, 29, 36
Sec. 3672 (26 U.S.C. (1946 ed.), Sec. 3672), 10, 29, 30, 31, 36

Internal Revenue Code of 1954, P.L. 591, 83d Cong., 2d sess.:

Sec. 6321 27
Sec. 6322 27
Sec. 6323 27

Revenue Act of 1928, c. 852, 45 Stat. 791, Sec. 613.. 29
Revenue Act of 1942, c. 619, 56 Stat. 798, Sec. 505.. 30
Revised Statutes:
Sec. 3186 29
Sec. 3466 (31 U.S.C. 1952 ed., Sec. 191), 6, 11, 12, 26, 37

South Carolina Code Annotated (1952 ed.):

Sec. 41-151 ..... 17, 38
Sec. 41-153 ..... 17, 38

Statutes—Continued

Page

Sec. 41-158 ..... 17, 18, 39
Sec. 41-159 ..... 17, 18, 39
Sec. 41-160 ..... 17, 18, 39
Sec. 41-161 ..... 17, 18, 39
Sec. 41-162 ..... 17, 18, 40
Secs. 45-1—45-557 19
Secs. 45-501—45-513 19

Miscellaneous:

H. Rep. No. 855, 76th Cong., 1st Sess., p. 26 (1939-2 Cum. Bull. 504, 524) 29
H. Rep. No. 1018, 62d Cong., 2d Sess., p. 1 29
H. Rep. No. 1337, 83d Cong., 2d Sess.. pp. A406-A407 27
S. Rep. No. 1315, 62d Cong., 3d Sess., p. 1 29
S. Rep. No. 1622, 83d Cong., 2d Sess., pp. 575-576 .. 27

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OPINIONS BELOW

The opinion of the Supreme Court of South Carolina is reported at 78 S.E. 2d 277. The order of the Court of Common Pleas of Greenville County, South Carolina (R. 8-11) is not reported.

JURISDICTION

The judgment of the Supreme Court of South Carolina (R. 12-14), was entered October 26, 1953. On January 22, 1954, Mr. Chief Justice Warren extended the time for filing a petition for a writ

of certiorari to and including March 25, 1954. The petition for a writ of certiorari was filed March 16, 1954, and was granted on May 24, 1954. The jurisdiction of this Court is conferred by 28 U.S.C., Section 1257 (3).

QUESTIONS PRESENTED

1. Whether the priority accorded claims of the United States against the assets of an insolvent debtor by Section 3466 of the Revised Statutes is defeated by a landlord's lien for rent arrears created by state law, where the landlord has not divested the debtor of possession of any property subject to the lien.

2. Whether the lien accorded the United States by Section 3670 of the Internal Revenue Code of 1939 is rendered subordinate to a subsequently arising landlord's lien created by state law, merely because notice of the federal tax lien was filed after the landlord's lien arose.

STATUTES INVOLVED

Sections 3670, 3671, and 3672 (a) of the Internal Revenue Code of 1939; Section 3466 of the Revised Statutes; and Sections 41-151, 41-153, 41-158, 41-159, 41-160, 41-161, and 41-162 of Title 41, Chapter 4, of the South Carolina Code Annotated (1952 ed.), are set out in the Appendix, *infra,* pp. 36-40.

STATEMENT

This suit (originating as a receivership proceeding (R. 1)) involves the relative priority of tax claims of the United States and claims for rent of a landlord under a distress against the assets of

Dan Tassey, Inc., an insolvent corporation in receivership (hereinafter sometimes referred to as the taxpayer).

The material facts, as disclosed by the statement of the case (R. 1-2), the Master's Report (R. 2-8), and the opinions below (R. 8-11, 12-14), are not in dispute and may be summarized as follows: As the result of an action filed in the Court of Common Pleas of Greenville County, South Carolina, a receiver was appointed by that court on April 8, 1952, to take charge of the business operated by Dan Tassey, Inc., the delinquent taxpayer, and all of its assets. The receiver took charge of such assets as of the day of his appointment, and retained possession of them until May 15, 1952.[1] R. P. Scovil, respondent herein, is the owner of the building then occupied by the taxpayer. The taxpayer was occupying the property under a written lease dated October 12, 1949, for a full term of five years, at a rental of $250 per month payable in advance on the first of each month. The rent for the months of February, March, and April, 1952, being in arrears, the landlord (Scovil) proceeded on April 7, 1952, the day before the receiver was appointed and took possession of the taxpayer's assets, to distress upon all the assets of the taxpayer for such rent arrears. After the receiver

[1] While the record is not clear on this point, the Master's Report (R. 2-8), allowing rent to that date and certain other items as expense of administration, indicates that the assets of the taxpayer had been sold by May 15, 1952, and that the proceeds were insufficient to pay all claims against the insolvent.

took possession, the landlord filed with the receiver a claim for $750 as rent for the months of February, March, and April, 1952, contending that the claim constituted a prior lien on the assets of the taxpayer, junior only to the expenses of administration. (R. 1-3, 12.)

The United States also filed a claim with the receiver for unpaid federal taxes in the total amount of $3,991.06, which included withholding taxes assessed on assessment lists received by the Collector of Internal Revenue on March 19, 1951, May 24, 1951, August 29, 1951, and December 3, 1951, February 23, 1952, and February 28, 1952, with respect to all of which a notice of lien was filed in the Office of the Register Mesne Conveyances of Greenville County on April 10, 1952, and withholding taxes amounting to $653.77 with respect to which the date on which the assessment list was received by the the Collector is not shown.[2] (R. 2, 13.)

Both in the trial court and in the Supreme Court of South Carolina the United States asserted its right to priority in payment of its debts under Section 3466 of the Revised Statutes, and also contended that under Sections 3670, 3671, and 3672 of the Internal Revenue Code of 1939 it had liens on the property of the taxpayer which were prior

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[2] The Government's claim also included $441.96 income tax assessed on a list received by the Collector on December 14, 1950, and with respect to which a notice of lien was filed with the Register of Mesne Conveyances of Greenville County on April 2, 1951. This part of the Government's claim was allowed priority, however (R. 13), and is not involved here.

and superior to the landlord's distress for rent. The Master held (R. 4-5) that the landlord had acquired a specific and perfected lien upon the property of the taxpayer upon the issuance of the distress warrant, which was the day before the receiver was appointed, and that the lien of the distress for rent defeated the priority of the United States under Section 3466. The Master further held that the Government's liens under Section 3670 of the 1939 Code did not attach to the property upon which the landlord levied his distress until that specific lien had first been satisfied; that in the nature of things the landlord was a "purchaser" within the meaning of Section 3672 (a) of the Internal Revenue Code of 1939; and that the tax liens of the United States were subordinate to the lien of the distress for the reason that under South Carolina law the lien of a landlord for past due rent is superior to that of a mortgagee, except in two instances, and since a mortgage takes precedence over a federal tax lien until recorded as required by Section 3672 (a) the landlord's lien necessarily took precedence over the federal tax liens. (R. 5-6.) The trial court (on exceptions filed by the United States to the Master's Report (R. 2)) discussed only the Government's claim to priority under the lien provisions of the 1939 Code and concurred in the Master's conclusion that the landlord was a "purchaser" within the meaning of Section 3672 (a), but gave priority to one assessment of tax with respect to which notice of lien

was filed prior to the distress for rent (R. 9-10). (See fn. 2, *supra*, p. 4.)

In affirming the decision of the trial court, the Supreme Court of South Carolina held, first, that the landlord's lien was perfected the day before the receiver was appointed and that Section 3466 did not give the United States priority over a lien for rent. (R. 13.) It further held that the federal tax lien under Section 3670 of the 1939 Code "is of force against a Landlord's lien which has been perfected only from the date of recording of such tax lien and, therefore, not effective in the case at bar." (R. 14.)

SUMMARY OF ARGUMENT

I

Under the facts of this case the United States is entitled to priority in payment of its tax claims under Section 3466 of the Revised Statutes, which provides that in cases of insolvency where the debtor has made a voluntary assignment of all his property for the benefit of creditors or has committed an act of bankruptcy "the debts due to the United States shall be first satisfied". While the words of the statute are broad and sweeping and, on their face, admit of no exception to the priority of claims of the United States, this Court has in the past suggested that certain exceptions might be read into the statute, but it has never expressly decided whether the priority can be defeated by a prior specific and perfected adverse lien, although the question has been reserved many times.

In the instant case the courts below held that the landlord's distress for rent, issued the day before the appointment of a receiver who took over the insolvent debtor's property, gave rise to a prior specific and perfected lien, thus bringing this case within the suggested exception, and that for that reason the landlord's lien defeated the priority of the United States under Section 3466.

This Court has long held that the effect and operation of a state lien in relation to the claim of priority of the United States is always a federal question; that a state court's characterization of a lien, while entitled to weight, is not conclusive; that the priority accorded the United States cannot be impaired by state legislation or state court decisions creating interests in the debtor's property in favor of third persons; and that if a prior adverse lien is ever to defeat the priority of the United States under the statute, as a *minimum* requirement it must be definite, and not merely ascertainable in the future by taking further steps, as to the identity of the lienor, the amount of the lien, and the property subject to the lien. It is not enough that the lienor has the power to bring these three elements, or any of them, down from broad generality to the earth of specific identity. To be "specific" under the decisions of this Court, the adverse lien must, among other requirements, attach to specific items of the debtor's property; and to be "perfected" under the decisions, the adverse lien must be enforced at least to the point of divesting the debtor of either title or possession.

The prior adverse lien here involved is not sufficiently specific and perfected, under the decisions, to bring this case within the suggested exception—assuming, without conceding, that such an exception can be read into the statute. The distress for rent was issued upon all the property of the debtor, and it is not shown that any particular property was set aside from the taxpayer's general assets for payment of the landlord's claim as contemplated by the statute. Thus the resulting lien is lacking in the required specificity. Also, the record fails to show that either title or possession of the debtor's property was affected by issuance of the distress warrant. He had five days from service of the distress warrant to post a surety bond and free his property from the distress. Before this period expired a receiver was appointed who took over the property, thus indicating that the landlord's lien likewise was lacking in the perfection required by the decisions. Furthermore, the record fails to show that the landlord's lien was sufficiently definite, either as to the amount of the lien or the property to which it attached, to meet the minimum requirements indicated in the decisions.

Even if the state courts' characterization of the landlord's lien as specific and perfected be accepted, however, we submit that the United States still is entitled to priority under Section 3466. This Court has never held that an exception actually exists in the case of a prior specific and perfected lien. The cases in which the question has been reserved indicate that, rather than such an implied

exception, the Court has in fact recognized that the priority accorded the United States does not extend to property which has been so far subjected to the satisfaction of a prior adverse claim that it no longer can be considered a part of the insolvent's estate subject to the priority, and the recent decisions in *United States* v. *Gilbert Associates,* 345 U. S. 361, and *United States* v. *New Britain,* 347 U. S. 81, indicate that the priority of the United States under this statute is absolute. The statute, where applicable, provides that "the debts due to the United States shall be first satisfied", and it has never been held that Congress, acting under the powers granted it by the Constitution, cannot place debts due the United States ahead of all other claims against an insolvent debtor.

II

The tax liens of the United States under Sections 3670 and 3671 of the Internal Revenue Code were prior in time and superior in right to any lien acquired by the landlord as a result of his distress for rent and the United States is entitled to preference in the payment of its claim for that reason. The tax liens of the United States arose on various dates from March 19, 1951, to February 28, 1952, both inclusive (except for one assessment of $653.77 with respect to which the date the assessment list was received by the Collector was not available), and clearly attached to "all property and rights to property" of the delinquent taxpayer. On the other hand, the landlord acquired no lien whatever

on property of the taxpayer prior to issuance of the distress for rent on April 7, 1952, and regardless of any rights his distress for rent may have given him as against others it could not defeat the prior liens of the United States. The federal tax liens were first in time and prior in right, and entitled to priority in payment. *United States* v. *New Britain,* 347 U.S. 81; *Michigan* v. *United States,* 317 U.S. 338.

The courts below did not question the priority of the federal tax liens in point of time, but held that the landlord was protected by Section 3672 of the Internal Revenue Code, which provides that the lien of the United States shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice of lien has been filed as therein provided, presumably on the ground that the landlord was a "purchaser" within the meaning of the statute, and since notice of the federal liens was not filed until April 10, 1952, the liens were not valid as against the landlord. It is clear from the decisions of this Court in *United States* v. *Gilbert Associates,* 345 U.S. 361, and *United States* v. *Security Tr. & Sav. Bk.,* 340 U.S. 47, that the landlord was not a "judgment creditor" within the meaning of Section 3672, and we submit likewise was not a "purchaser" within the meaning of that section. His distress for rent merely gave him a right to proceed against property of the taxpayer for satisfaction of his claim. There was no transfer of title or possession of the property and no passing of present consideration.

The tax liens of the United States were first in time and prior in right, and under the decision of this Court in *United States* v. *New Britain*, 347 U.S. 61, should be first paid.

ARGUMENT

I

The United States Is Entitled Under Section 3466 of the Revised Statutes to Priority in Payment of Its Claims for Unpaid Taxes

Regardless of the Government's rights as a prior lien claimant, discussed at pages 26-34, *infra*, its claim against the insolvent debtor for unpaid taxes is entitled to priority under Section 3466 of the Revised Statutes (Appendix, *infra*, p. 37), which provides:

> Whenever any person indebted to the United States is insolvent, * * * the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

In view of the insolvency of the debtor and the appointment of a receiver of its business and assets, the applicability of the above section to this case is clear. *United States* v. *Oklahoma*, 261 U.S.

253, 259-260; *Bramwell* v. *U. S. Fidelity Co.*, 269 U.S. 483, 488-489; *Price* v. *United States*, 269 U.S. 492; *United States* v. *Texas*, 314 U.S. 480, 483-484; *Illinois* v. *Campbell*, 329 U.S. 362, 367-369.[3] Also, it is settled that the priority of the United States attaches at the time a receiver is appointed and takes over the taxpayer's business and assets. *Spokane County* v. *United States*, 279 U.S. 80, 93; *United States* v. *Oklahoma*, *supra*, p. 260; *Illinois* v. *Campbell*, *supra*, pp. 370, 373; *Massachusetts* v. *United States*, 333 U.S. 611, 617, fn. 8. "Once attaching, it is final and conclusive." *Massachusetts* v. *United States*, *supra*, p. 625.

In *United States* v. *Waddill Co.*, 323 U.S. 353, this Court said that the words of Section 3466 "are broad and sweeping and, on their face, admit of no exception to the priority of claims of the United States," and added (p. 355):

> But this Court in the past has recognized that certain exceptions could be read into this statute. The question has not been expressly decided, however, as to whether the priority of the United States might be defeated by a specific and perfected lien upon the property at the time of the insolvency or voluntary assignment. *Conard* v. *Atlantic Insurance Co.*, 1 Pet. 386, 441, 444; *Brent* v. *Bank of Washington*, 10 Pet. 596, 611, 612; *Spokane County* v.

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[3] Taxes are "debts" of the United States within the purview of Section 3466. *Price* v. *United States*, 269 U.S. 492, 499-501; *Illinois* v. *United States*, 328 U.S. 8; *Massachusetts* v. *United States*, 333 U.S. 611, 625, fn. 24.

United States, 279 U.S. 80, 95; *United States* v. *Knott*, 298 U.S. 544, 551; *New York* v. *Maclay, supra*, 292, 294; *United States* v. *Texas, supra*, 485, 486. It is within this suggested exception that the landlord and the municipality seek to bring themselves.

Although suggesting that certain exceptions may be read into the priority statute this Court has, in a long line of decisions including the decisions cited in the above quotation, held that an adverse lien which has not become both specific and perfected before the debtor becomes insolvent cannot serve to deprive the United States of its right to priority under the statute. See, also, *Illinois* v. *Campbell*, 329 U.S. 362, 370; *United States* v. *Gilbert Associates*, 345 U.S. 361, 365. Compare *Illinois* v. *United States*, 328 U.S. 8; *Massachusetts* v. *United States*, 333 U.S. 611; *United States* v. *Security Tr. & Sav. Bk.*, 340 U.S. 47; *United States* v. *New Britain*, 347 U.S. 81.

In the instant case, both the Master (R. 5) and the Supreme Court of South Carolina (R. 13) held that the landlord's distress for rent, issued the day before the receiver was appointed and took over the taxpayer's property, gave rise to a specific and perfected lien upon the delinquent taxpayer's property prior to the time the priority of the United States under Section 3466 attached, thus bringing the case within the suggested exception to the priority statute, and on that ground held that the landlord's lien defeated the priority of the United

States. We submit that this conclusion is contrary to the decisions of this Court.

In the first place, the state courts' characterization of the lien here involved is not conclusive on the Federal Government.[4] The effect and operation of a state lien in relation to the claim of priority of the United States under Section 3466 is always a federal question. Hence a state court's characterization of a lien as specific and perfected is not conclusive. The state characterization, though entitled to weight, is always subject to reexamination by this Court. *United States* v. *Waddill Co., supra,* p. 357; *Illinois* v. *Campbell, supra,* p. 371; *United States* v. *Gilbert Associates, supra,* p. 363. See, also, *United States* v. *Security Tr. & Sav. Bk., supra,* p. 51; *United States* v. *New Britain, supra,* p. 84. And the priority accorded the United States under that statute cannot be impaired by state legislation or state court decisions creating interests in the debtor's property in favor of third persons. *United States* v. *Oklahoma,* 261 U.S. 253, 260; *Illinois* v. *Campbell, supra,* p. 371. The character of the adverse lien depends upon its substance, not terminology. And while this Court has not determined to what extent an adverse lien must have ripened into an interest in the prop-

[4] The Supreme Court of South Carolina said (R. 13): "There is no question in this case of distress having been perfected prior to the appointment of the receiver." The record does not show any concession to that effect on the part of the Government; nor does it show that anything more than issuance of the distress warrant on April 7, 1952, was done in the matter prior to the appointment of the receiver on April 8th.

erty of the debtor before the priority of the United States attaches, the opinion in *Illinois* v. *Campbell, supra,* makes it clear that if an adverse lien ever is to defeat the federal priority, as a *minimum* requirement (p. 375)—

> the lien must be definite, and not merely ascertainable in the future by taking further steps, in at least three respects as of the crucial time. These are: (1) the identity of the lienor, *United States* v. *Knott,* 298 U.S. 544, 549-551; (2) the amount of the lien, *United States* v. *Waddill Co.,* 323 U.S. at 357-358; and (3) the property to which it attaches, *United States* v. *Waddill Co., supra; United States* v. *Texas, supra; New York* v. *Maclay, supra. It is not enough that the lienor has power to bring these elements, or any of them, down from broad generality to the earth of specific identity.* [Italics supplied.]

Lack of definiteness as to the property subject to the adverse lien was an important consideration in *Illinois* v. *Campbell, supra, United States* v. *Waddill Co., supra,* and *United States* v. *Texas, supra.* However, in all three cases this Court emphasized that definiteness as to amount likewise is an essential factor in determining whether local statutory liens are specific and perfected. In *United States* v. *Texas, supra* (p. 487), while the Court pointed out that the "property devoted to or used in his business as a distributor," to which the state lien for taxes attached, "is neither specific nor

constant," it added: "But a more important consideration is that the *amount* of the claim secured by the lien is unliquidated and uncertain." (Italics supplied.) And in *United States* v. *Waddill Co., supra,* in holding the amount claimed as rent was uncertain, the Court said (pp. 357-358): "The landlord may have been mistaken as to the rental rate or as to payments previously made and the tenant may have been entitled to a set-off".

To be "specific" under the decisions of this Court, the adverse lien must, among other requirements, attach to specific items of the debtor's property. *United States* v. *Texas, supra,* p. 485; *United States* v. *Waddill Co., supra,* p. 359; *Illinois* v. *Campbell, supra,* pp. 373, 375-376. Compare *United States* v. *New Britain, supra,* p. 84. In *United States* v. *Gilbert Associates, supra,* p. 366, this Court said:

> In claims of this type, "specificity" requires that the lien be attached to certain property by reducing it to possession, on the theory that the United States has no claim against property no longer in the possession of the debtor. *Thelusson* v. *Smith,* 2 Wheat. 396. Until such possession, it remains a general lien.

To be "perfected" under the decisions of this Court, the adverse lien must be enforced at least to the point of divesting the debtor of either title or possession. *United States* v. *Waddill Co., supra,* pp. 357-360; *Illinois* v. *Campbell, supra,* pp. 375-376; *United States* v. *Gilbert Associates, supra,* pp.

365-366. Compare *United States* v. *Security Tr. & Sav. Bk., supra*, p. 51; *United States* v. *New Britain, supra*, p. 84.

On the basis of this Court's decisions it is clear, we submit, that the distress for rent issued by the Court of Common Pleas in this case the day before the receiver was appointed was not a lien of the character that will defeat the priority of the United States under Section 3466. The distress was issued pursuant to provisions of South Carolina law giving landlords this extraordinary remedy for enforcing the collection of rent arrears.[5] Section 41-151 of the South Carolina Code, authorizing the collection of rent by distress, provides that any magistrate in the county in which the premises occupied are situated, upon affidavit of the landlord or his agent setting forth the amount of rent due, may issue his distress warrant in which shall be named the amount of rent due with costs, and the warrant shall then be delivered to any regular constable, such special constable as the magistrate may appoint, or to the sheriff of the county, for enforcement. Section 41-153 of the South Carolina Code provides that such officer shall forthwith demand of the tenant payment of the rent with costs as named in the warrant. If the amount be paid, the officer shall return the warrant with the amount collected to the magistrate, who shall settle with the landlord. But if the tenant fails or refuses to

[5] See Sections 41-151, 41-153, 41-158, 41-159, 41-160, 41-161, and 41-162, Title 41, Chapter 4, South Carolina Code Annotated (1952 ed.), Appendix, *infra*, pp. 38-40.

pay, the officer is required to "distrain sufficient of the property upon the rented premises to pay such amount," giving the tenant a list in writing of the property distrained together with a copy of the distress warrant. Section 41-158 provides that any distress must be reasonable with respect to the amount of property distrained, and Section 41-159 provides that any lessor or landlord who makes unreasonable and excessive distress shall be liable for all damages sustained by the tenant whose goods are distrained by reason of such excessive distress. Section 41-160 provides that within five days after distraint (which period had not expired here when the receiver was appointed) the tenant may free the property from the lien of the distraint by giving a bond payable to the landlord in double the amount claimed, with sufficient surety or sureties approved by the court, and the issues thus joined shall be tried by the court. Section 41-161 provides that if the tenant fails to give bond as provided by Section 41-160, then the officer may sell such property at public auction to the highest bidder for cash at a designated place of sale after posting a notice of such sale for five days upon the premises and two other public places in the county stating the time and place of such sale, and Section 41-162 provides that the purchaser at a sale of chattels seized under a distress warrant "shall take the property subject to any lien for taxes thereon."

A landlord apparently has no lien for rent under South Carolina law (other than an agricul-

tural lien),[6] except such as may result from a distress for rent under the above provisions of the South Carolina Code. Compare *Fidelity Trust & Mortgage Co.* v. *Davis*, 158 S. C. 400, 155 S. E. 622; *Ex Parte Stackley*, 161 S. C. 278, 159 S. E. 622, and cases cited.[7] Accordingly, it must be concluded that the landlord had no lien whatever in the instant case prior to issuance of the distress warrant on April 7, 1952. Furthermore, the record in this case does not show that the landlord actually did more than cause the distress warrant to be issued the day before the receiver was appointed and took over all of the delinquent taxpayer's property, although the report of the Master and the opinions of the court below seem to proceed on the premise that distress also was levied.[8]

Even if the distress warrant was served on April 7, 1952, and levy was made in accordance with the South Carolina statute, as apparently assumed by the courts below (R. 2, 4, 10, 12; see, also Br. in Opp. herein, p. 4), we submit the resulting lien was

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[6] The statutory liens authorized by South Carolina law are provided for in Title 45 (Sections 45-1 to 45-557, inclusive) of the South Carolina Code Annotated (1952 ed.), including provisions for an agricultural lien (Sections 45-501 to 45-513), not applicable here.

[7] See, also, *Shalet* v. *Klauder*, 34 F. 2d 594 (C.A. 3d); *In re Wall*, 60 F. 2d 573 (E.D. Miss.); *Hay* v. *Patrick*, 79 F. 2d 407 (C.A. 3d); *American Exchange Bank* v. *Goodlee Realty Corp.*, 135 Va. 204, 116 S.E. 505; *Corley-Powell Produce Co.* v. *Allen*, 42 Ga. App. 641, 157 S.E. 251; *State* v. *Gould*, 32 Del. 561, 127 Atl. 506.

[8] The statement of the case (R. 1) is to the effect that "the Landlord, on the 7th day of April, 1952, distressed upon all assets of said corporation for the rent then in arrears * * *."

not sufficiently specific and perfected under the decisions of this Court to defeat the priority of the United States—assuming such an implied exception can be read in the statute. The taxpayer had five days thereafter in which to furnish a surety bond to free his property from the distraint.[9] Before this period expired, the court authorizing the distress appointed a receiver and ordered him to take over the business and property of the debtor. By contrast, in *United States* v. *Gilbert Associates, supra,* there were indications that the property of the insolvent debtor had been "sold" by the town at a tax sale before (and again after) the appointment of the receiver.[10]

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[9] In the brief in opposition (p. 4), counsel assert that the right to substitute acceptable security for the distressed property in no way impugns the perfection of the lien. Such substitution no doubt serves the purposes of the state law and affords adequate protection to the landlord. But it is a clear indication that the rights of the landlord had not ripened into either title or possession at the time the receiver was appointed. At best, the property was held in a form of *custodia legis* pending determination of the landlord's rights.

[10] In the brief in opposition herein (pp. 4-5) counsel for the landlord state that the possession of the receiver was with the consent of the landlord, who merely agreed to forego the foreclosing of his perfected lien by the sale as provided for in the statute, so that all priorities of liens could be determined in the receivership proceedings. But there is nothing in the record to support this statement. Compare *Goggin* v. *California Labor Div.*, 336 U.S. 118. Counsel cited no authority to show the landlord had acquired any rights under which he could have prevented such action. Furthermore, the landlord submitted his claim to the receiver for rent arrears as a secured creditor, just as any other secured creditor would have done.

Also, except for the fact that in this case the distress for rent was issued the day before the receiver was appointed while in *United States* v. *Waddill Co., supra,* the distress for rent was issued twelve days after the deed of assignment was executed, a fact which seems to be in no wise determinative, the landlord's lien seems to be subject to the same infirmity of indefiniteness in amount as was the landlord's lien in the latter case. And, so far as the record shows, it was just as indefinite as to the property subject to the lien as was the landlord's lien in the *Waddill* case. The record indicates that all of the property of the taxpayer was distrained, which would seem to indicate a general, rather than specific, lien under the decisions of this Court. (R. 1, 12.) *United States* v. *Gilbert Associates, supra,* p. 366; *United States* v. *New Britain, supra,* p. 84.

The Supreme Court of South Carolina predicated its decision, in part, on the proposition that "The Government could have no greater right in the property in the hands of the receiver than the insolvent." (R. 13.) This statement fails to recognize the paramount right of the United States to provide for the collection of its debts. The taxpayer's rights in the property after appointment of the receiver were nil—unless, of course, a surplus should remain after payment of creditors. The United States does not stand in the shoes of the insolvent, and is not claiming under any right of subrogation. It is claiming as a creditor, just as the landlord is, but under a priority granted by

Congress, and this Court has never held that Congress, acting under the powers granted to it by the Constitution, cannot place the debts of the United States ahead of all other debts owing by an insolvent debtor.

Even if the South Carolina courts' characterization of the landlord's lien as specific and perfected be accepted, however, we submit it still will not defeat the priority of the United States under Section 3466 of the Revised Statutes. That section was derived from early statutes enacted to protect the Government in the collection of its taxes, particularly the Act of March 3, 1797, c. 20, 1 Stat. 512, Sec. 5, which was amended by the Act of March 2, 1799, c. 22, 1 Stat. 627, Sec. 65. *Price* v. *United States*, 269 U.S. 492, 500-501; *Spokane County* v. *United States*, 279 U.S. 80, 86-90. As pointed out by this Court in *United States* v. *Waddill Co.*, *supra*, p. 355, the words of the statute "are broad and sweeping and, on their face, admit of no exception to the priority of claims of the United States." In a long line of decisions, extending back to *United States* v. *Fisher*, 2 Cranch 358, *Thelusson* v. *Smith*, 2 Wheat. 396, and *Conard* v. *Atlantic Insurance Co.*, 1 Pet. 386, this Court has, except where the property sought to be subjected to the priority was no longer the property of the insolvent debtor (*Brent* v. *Bank of Washington*, 10 Pet. 596; *Beaston* v. *Farmers' Bank*, 12 Pet. 102), uniformly upheld the priority of the United States

in every case in which the statute has been found to be applicable.[11]

While in the past this Court has, as stated above, suggested that exceptions may be read into the priority statute, the nature or extent of such suggested exceptions have not been made entirely clear. In fact, while the question of a possible exception in the case of a prior specific and perfected lien has been posed in several cases (*United States* v. *Waddill Co., supra,* p. 355, and cases cited), this Court has never actually held there is an exception to the absolute priority accorded the United States by the statute. For instance, in *Illinois* v. *Campbell,* where exception was urged on the ground that the state tax liens there involved were specific and perfected prior to appointment of a receiver, the question again was reserved because this Court (p. 372) found it clear, quite apart from anything said in the Illinois Supreme Court's opinion, "that the lien was not so specific and perfected as to defeat the priority of the United States, *if that is at all possible.*" (Italics supplied.) Later, in *Massachusetts* v. *United States,* 333 U.S. 611, this Court refused to recognize any exception to the absolute

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[11] See, also, *Field* v. *United States,* 9 Pet. 182; *Bramwell* v. *U. S. Fidelity Co.,* 269 U.S. 483; *New York* v. *Maclay,* 288 U.S. 290, 293-294, and cases cited; *United States* v. *Emory,* 314 U.S. 423; *United States* v. *Texas,* 314 U.S. 480; *United States* v. *Waddill Co.,* 323 U.S. 353; *Illinois* v. *United States,* 328 U.S. 8; *Illinois* v. *Campbell,* 329 U.S. 362; *Massachusetts* v. *United States,* 333 U.S. 611, and cases cited in fn. 24, pp. 625-626.

priority of the United States under Section 3466, saying (p. 625) that the section "gives priority explicitly for '*debts* due to the United States' and the priority given is in terms absolute, not conditional. Once attaching, it is final and conclusive." In a subsequent footnote in that case (fn. 38, p. 634) it was pointed out that the original departures by the Court from the conclusive language of the statute—

> indeed did not contemplate that exceptions were being made. They conceived that the funds or property affected, being covered by mortgage, belonged in fact to third persons, not to the insolvent debtor. [Citations.] The Court has been loath to expand these exceptions, * * *, to include other types of lien.

Again, in *United States* v. *Gilbert Associates, supra,* p. 365, it is said: "This Court has never actually held that there is such an exception." Finally, in *United States* v. *New Britain,* 347 U. S. 81, in pointing out the difference between the lien of the United States under Section 3670 of the Internal Revenue Code of 1939 for unpaid taxes (discussed hereafter) and the priority of the United States under Section 3466 of the Revised Statutes, this Court said (p. 85):

> When the debtor is insolvent, Congress has expressly given priority to the payment of indebtedness owing the United States, *whether secured by liens or otherwise*, by § 3466 of the Revised Statutes, 31 U.S.C. (1946 ed.) § 191.

> In that circumstance, where all the property of the debtor is involved, Congress has protected the federal revenues by imposing an *absolute* priority. [Italics supplied.]

Examination of the above and other decisions of this Court on the subject indicates that, rather than recognizing any implied exception to the priority statute, the Court has recognized only that the priority accorded the United States by the statute does not extend to property of an insolvent which has been so far subjected to the satisfaction of a prior adverse claim that it no longer can be considered a part of the insolvent's estate subject to such priority. Compare *Brent* v. *Bank of Washington*, 10 Pet. 596; *Beaston* v. *Farmers' Bank*, 12 Pet. 102.[12]

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[12] This early implied exception to the priority statute apparently has led to much of the litigation on the subject which has found its way to this Court in later years, and seems still to be a source of confusion among the lower courts, as indicated by the decision below in the instant case. For instance, see the recent decisions of the Court of Appeals for the Fifth Circuit in *United States* v. *Atlantic Municipal Corp.*, 212 F. 2d 709, and *United States* v. *Fidelity & Deposit Co. of Maryland*, decided July 6, 1954 (1954 P-H. par. 72,665), affirming 108 F. Supp. 360 (S.D. Miss.). Earlier, in *United States* v. *Albert Holman Lumber Co.*, 206 F. 2d 685, 688, rehearing denied, 208 F. 2d 113, and *United States* v. *Liverpool & London & Globe Ins. Co.*, 209 F. 2d 684, 687 (now pending on certiorari, No. 34, October Term, 1954), both of which involve only the question of priority of liens, the same Court of Appeals quoted the concluding portion of a single sentence from this Court's opinion in *United States* v. *Knott*, 298 U.S. 544, 551, as authority for the proposition that a prior specific and perfected lien will defeat the priority of the United States. However, the *Knott* decision, like the others cited, did not

In any event, we submit that the priority of the United States under Section 3466 of the Revised Statutes is superior to the landlord's distress on the property here involved. The property belonged to the insolvent debtor at the time the receiver was appointed, and it was taken over by him and administered as such. Congress has by statute provided that in such cases "the debts due to the United States shall be first satisfied," thereby placing the debts due the United States ahead of all other debts owing by an insolvent debtor, "whether secured by liens or otherwise" (*United States* v. *New Britain*, *supra*, p. 85), and that includes the debt for taxes here involved.

II

Regardless of the Priority of the United States Under Section 3466 of the Revised Statutes, Its Tax Liens Were Prior in Time and Superior in Right to the Landlord's Claim Based on His Distress for Rent

The court below also was in error in holding that the landlord's claim for rent arrears, based upon the distress warrant issued April 7, 1952, was entitled to preference over the tax liens of the United States asserted under Sections 3670 and 3671 of the Internal Revenue Code of 1939 (Appendix, *infra*, p. 37). These sections provide that if any person liable to pay any tax neglects to pay such tax after demand the amount (including any interest, penalty, additional amount, or addition

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so hold, but merely held the lien there involved did not defeat the priority of the United States. See *Illinois* v. *Campbell*, 329 U.S. 362, 370, fn. 10.

to the tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States "upon all property and rights to property, whether real or personal, belonging to such person;" and that, unless another date is specifically fixed by law, the lien shall arise at the time the assessment list is received by the Collector (now Director) and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.[13]

The federal taxes here involved were assessed on assessment lists received by the Collector on various dates between March 19, 1951, and February 28, 1952, both inclusive, plus an additional amount of $653.77 with respect to which the date of receipt of the assessment list by the Collector is not shown. (R. 4, 8-9, 13.) Thus the liens of the United States for its delinquent taxes (with the exception of the one item) clearly arose and attached to all property and rights to property of the delinquent taxpayer prior to the time any lien could have been acquired by the landlord as a result of the distress for rent issued on April 7, 1952. Regardless of any rights his distress for rent may have given the landlord as against others, we submit it cannot defeat the prior tax liens of the United States.

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[13] The general federal tax lien provisions here involved are incorporated in substantially unchanged form in Sections 6321, 6322, and 6323 of the Internal Revenue Code of 1954 (P.L. 591, 83d Cong., 2d Sess.). See also, H. Rep. No. 1337, 83d Cong., 2d Sess., pp. A406-A407; S. Rep. No. 1622, 83d Cong., 2d Sess., pp. 575-576.

In this situation the decisions of this Court in *Michigan* v. *United States*, 317 U.S. 338, and *United States* v. *New Britain*, 347 U.S. 81, are clearly controlling. See also *Detroit Bank* v. *United States*, 317 U.S. 329. Compare *Goggin* v. *California Labor Div.*, 336 U.S. 118. In *Michigan* v. *United States*, *supra*, this Court, citing Article I, Section 8 of the Constitution, and *United States* v. *Snyder*, 149 U.S. 210, held that the establishment of a tax lien by Congress is an exercise of its constitutional power "to lay and collect taxes", and that laws of Congress enacted pursuant to the Constitution are by Article VI of the Constitution declared to be "the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." The opinion then continued (p. 340):

> "It is of the very nature and essence of a lien, that no matter into whose hands the property goes, it passes *cum onere*." *Burton* v. *Smith*, 13 Pet. 464, 483; *Rankin* v. *Scott*, 12 Wheat. 177, 179; *Howard* v. *Railway Co.*, 101 U.S. 837, 845. Hence it is not debatable that a tax lien imposed by a law of Congress, as we have held the present lien is imposed, cannot, without the consent of Congress, be displaced by later liens imposed by authority of any state law or judicial decision.

In the instant case the tax liens of the United States were prior in time to any lien of the landlord

for rent, and, being perfected liens upon all the property and rights to property of the delinquent taxpayer, they also were prior in right under the decisions in the *Michigan* and *New Britain* cases, *supra*. The courts below based their decision to the contrary on Section 3672 (a) of the 1939 Code (Appendix, *infra*, pp. 36-37), which, so far as material to this discussion, provides that the lien under Section 3670 "shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor," until notice thereof has been filed by the Collector as therein provided. This latter section does not prevent the tax lien from attaching to "all property and rights to property" of the delinquent taxpayer, but merely provides that it "shall not be valid" as against the four categories of interest enumerated until duly recorded. In *United States* v. *New Britain, supra*, this Court said (p. 88):[14]

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[14] Sections 3670, 3671 and 3672 of the 1939 Code were based on Section 3186 of the Revised Statutes, as amended by the Act of March 4, 1913, c. 166, 37 Stat. 1016; the Act of February 26, 1925, c. 344, 43 Stat. 994; and Section 613 of the Revenue Act of 1928, c. 852, 45 Stat. 791. Protection against this secret lien of the United States was first extended to mortgagees, purchasers, and judgment creditors by the Act of March 4, 1913, as a result of this Court's decision in *United States* v. *Snyder*, 149 U.S. 210. See H. Rep. No. 1018, 62d Cong., 2d Sess., p. 1; S. Rep. No. 1315, 62d Cong., 3d Sess., p. 1. See, also, *United States* v. *Curry*, 201 Fed. 371 (D. Md.). This provision was carried into Section 3672 (a) of the Internal Revenue Code of 1939, which, as a result of the decision in *United States* v. *Rosenfield*, 26 F. Supp. 433 (E.D. Mich.), reversed October 9, 1939, *sub nom. Morrison* v. *United States*, (C.A. 6th), 26 A.F.T.R. 1205, was amended, among other things, to include "pledgees". See H. Rep. No. 855, 76th Cong., 1st Sess., p. 26 (1939-2 Cum. Bull. 504, 524); *United States* v.

> There is nothing in the language of § 3672 to show that Congress intended antecedent federal tax liens to rank behind any but the specific categories of interests set out therein, and the legislative history lends support to this impression.

In this case, the Master held, among other things (R. 5-7),[15] that the landlord was a "purchaser" within the meaning of Section 3672 (a) of the 1939 Code, and that accordingly the federal tax liens were not valid against the landlord until recorded. The trial court agreed with the Master's reasoning

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Security Tr. & Sav. Bank., 340 U.S. 47, 52-53. Section 3672 again was amended by Section 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798.

[15] The Master also held (R. 6-7), on authority of *Ferris* v. *Chic-Mint Gum Co.*, 14 Del. Ch. 232, 124 Atl. 577, and similar cases, that under South Carolina law a landlord's distress for rent is superior to that of a mortgage (except in two instances), and since the federal lien is not valid as against a mortgage until notice is filed, it necessarily follows that the landlord's lien takes precedence over the federal tax lien. That conclusion is also completely refuted by the decision of this Court in *United States* v. *New Britain, supra*, where it is said (p. 88):

> The United States is not interested in whether the State receives its taxes and water rents prior to mortgagees and judgment creditors. That is a matter of state law. But as to any funds in excess of the amount necessary to pay the mortgage and judgment creditors, Congress intended to assert the federal lien. There is nothing in the language of § 3672 to show that Congress intended antecedent federal tax liens to rank behind any but the specific categories of interests set out therein, and the legislative history lends support to this impression.

See also, *Spokane County* v. *United States*, 279 U.S. 80, 91; *California State Dept. of Employ.* v. *United States*, 210 F. 2d 242 (C.A. 9th).

(R. 10), and the Supreme Court of South Carolina apparently concurred, because it said the statute provides that federal liens "shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector" (R. 13), and that (R. 14)——

> The Government's tax lien under this section is of force against a Landlord's lien which has been perfected only from the date of recording of such tax lien and, therefore, not effective in the case at bar.

The landlord obviously did not become a "judgment creditor" within the meaning of Section 3672 (a) of the 1939 Code by the issuance, or even the service, of the distress for rent under South Carolina law. *United States* v. *Gilbert Associates, supra; United States* v. *Security Tr. & Sav. Bk., supra.* See also *MacKenzie* v. *United States,* 109 F. 2d 540 (C.A. 9th); *Miller* v. *Bank of America, N. T. & S. A.,* 166 F. 2d 415 (C.A. 9th). It is equally clear, we submit, that the landlord did not become a "purchaser" within the meaning of Section 3672 (a) upon the issuance, or service, of the distress for rent under state law.[16] As this Court held in *United States* v. *Gilbert Associates, supra,* p. 364, with respect to the use of the term "judg-

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[16] Compare *United States* v. *Eisinger Mill & Lumber Co.,* 202 Md. 613, 98 A. 2d 81, in which case the trial court had held a mechanic's lien claimant under Maryland law to be a "pledgee" within the meaning of Section 3672 (a) of the Internal Revenue Code.

ment creditor" in Section 3672, Congress must also have used the term "purchaser" in that section in the usual, conventional sense. Otherwise, the uniformity in application contemplated by the statute would be defeated.

Issuance of the distress for rent did not effect a transfer of title or possession, and no present consideration passed. Issuance of the distress warrant merely created a preference in favor of the landlord, with the further right to have so much of the distrained property sold as might be necessary to satisfy his claim for rent arrears. Any contention that the landlord became a "purchaser" upon issuance of the distress warrant is completely negated by the fact that on the following day all of the taxpayer's property was turned over to the receiver appointed by the Court of Common Pleas, and the landlord filed his claim with the receiver for his unpaid rent.[17]

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[17] The courts below cited no authority for the proposition that the landlord became a "purchaser" upon issuance of the distress warrant, the only authorities cited being *Cranford Co.* v. *L. Leopold & Co.*, 189 Misc. 388, 70 N.Y.S. 2d 183, affirmed, 273 App. Div. 754, 75 N.Y.S. 2d 512, motion for leave to appeal denied, 273 App. Div. 846, 76 N.Y.S. 2d 839, motion for leave to appeal dismissed, 297 N.Y. 884, 79 N.E. 2d 279, and *National Refining Co.* v. *United States*, 160 F. 2d 951 (C.A. 8th), cited in the Master's report. (R. 6.) The latter case, whether right or wrong on this issue, clearly is not in point because there the Court of Appeals concluded (p. 955) that the assignee, for a valuable present consideration, acquired an interest in the assignor's property which constituted the assignee a "purchaser" within the meaning of the statute. *Cranford Co.* v. *L. Leopold & Co.*, *supra*, holding a mechanic's lien claimant under New York law to be a "purchaser" within the

The statement of the Supreme Court of South Carolina (R. 14) that the Government's tax lien is, under Section 3672 "of force against a Landlord's lien which has been perfected only from the date of recording of such tax lien * * *," further carries with it the suggestion that the court on authority of the cases cited in the Master's report, and particularly *Regan* v. *Metropolitan Haulage Co.*, 127 N.J. Eq. 487, 14 Atl. 2d 257 (R. 5), was of the opinion that the liens of the United States, being general liens, do not attach to any specific property covered by a valid specific lien until after the specific lien is first satisfied. But any such conclusion is definitely contrary to the decision in *United States* v. *New Britain, supra.* The tax lien of the United States attaches to "all property and rights to property" of the delinquent taxpayer. On that basis it has been characterized as a general lien rather than a specific lien. *United States* v. *Gilbert Associates, supra,* p. 365. However, the federal lien also is a perfected lien, in the sense that there is nothing more to be done to have a choate lien. *United States* v. *New Britain, supra,* p. 84. In this situation, this Court pointed out in the *New Britain* case, with respect to the statutory liens there involved that (p. 84) "the fact that one group of liens is specific and the other general in and of itself is of no significance in these cases involving statutory liens on real estate only"; that while a mortgage is

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meaning of the federal statute, clearly is wrong and without authority in law. See *United States* v. *Eisinger Mill & Lumber Co., supra,* fn. 16, p. 31.

a specific lien, yet a statutory lien is as binding as a mortgage, and has the same capacity to hold the land so long as it is in force; and that (p. 84)—

> the general statutory liens of the United States are as binding as the specific statutory liens of the City. The City gains no priority by the fact that its liens are specific while the United States' liens are general. Obviously, the State cannot on behalf of the City impair the standing of the federal liens, without the consent of Congress.

We find no basis in law or reason for holding that the general statutory lien of the United States is any less binding where the property of the delinquent taxpayer is personalty rather than real property.

The tax liens of the United States were first in time and prior in right, and the fact that they were not recorded until three days after the landlord's distress for rent was issued is of no consequence under the circumstances. The United States is entitled to payment ahead of the landlord on that account as well as on account of the priority accorded under Section 3466 of the Revised Statutes.

CONCLUSION

The decision of the court below is clearly wrong. It is contrary to the decisions of this Court and should be reversed, and the case remanded with directions to accord the claim of the United States its proper priority.

Respectfully submitted,

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SEPTEMBER, 1954.

APPENDIX

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1952 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1952 ed., Sec. 3671.)

SEC. 3672 [as amended by Sec. 401, Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 505, Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*— Such lien shall not be valid as against any

mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

* * * * *

(26 U.S.C. 1952 ed., Sec. 3672.)

Revised Statutes of the United States:

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

(31 U.S.C. 1952 ed., Sec. 191.)

South Carolina Code Annotated (1952 ed.):

Title 41. Landlord and Tenant. Chapter 4. Collection of Rent by Distraint.

SEC. 41-151. *Collection of rent by distress.*

A landlord may enforce collection of rent due by distress in the following manner, to wit:

Any magistrate in the county in which the premises occupied are situated may issue, upon receipt of an affidavit of the landlord or his agent setting forth the amount of rent due, his distress warrant in which shall be named the amount of rent due with costs and such warrant shall be delivered to (a) any regular constable, (b) such special constable as the magistrate may appoint or (c) the sheriff of the county for enforcement.

SEC. 41-153. *Distraint on tenant's property if rent and cost not paid.*

Such officer shall forthwith demand of the tenant payment of the rent with costs as named in the distress warrant. If such amount be paid the officer shall return the warrant with the amount collected to the magistrate who shall settle with the landlord. But if the tenant fail or refuse to pay such rent with costs the officer shall distrain sufficient of the property upon the rented premises to pay such amount, giving the tenant a list in writing of the property distrained together with a copy of the distress warrant.

SEC. 41-158. *Only reasonable amount of property to be distrained.*

Any distress must be reasonable in respect to the amount of property distrained.

SEC. 41-159. *Damage for unreasonable distress.*

Any lessor or landlord who makes unreasonable and excessive distress shall be liable for all damages sustained by the tenant whose goods are distrained by reason of such excessive distress. Such damage may be recovered by an action in any court of competent jurisdiction.

SEC. 41-160. *Tenant may free property from distraint by giving bond.*

Within five days after such distraint the tenant may free the property from the lien of the distraint by giving a bond payable to the landlord in double the amount claimed, with sufficient surety or sureties approved by the court, and the issues thus joined shall be tried by the court. The landlord shall have the right to except to the surety or sureties and the surety or sureties shall justify before the magistrate as provided for justification for sureties in claim and delivery actions.

SEC. 41-161. *Sale of property distrained.*

If the tenant fails to give bond as above prescribed then the officer may sell such property

at public auction to the highest bidder for cash at a designated place of sale after posting a notice of such sale for five days upon the premises and two other public places in the county stating the time and place of such sale.

SEC. 41-162. *Taxes lien on property sold under distress.*

The purchaser at a sale of chattels seized under a distress warrant shall take the property subject to any lien for taxes thereon.

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